

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION**

**CIVIL NO. 1:09cv244-03-T  
(1:07CR9)**

<b>NORMAN W. MCCURRY,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b><u>ORDER OF DISMISSAL</u></b>
	)	
<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Respondent.</b>	)	
<hr style="width:40%; margin-left:0"/>	)	

**THIS MATTER** is before the Court on Petitioner’s Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255, filed July 8, 2009.

Pursuant to Rule 2 of the Rules Governing Section 2255 Proceedings for the United States District Courts, a petitioner “must substantially follow either the form appended to these rules or a form prescribed by a local district-court rule.” **Rule 2(c), Rules Governing Section 2255 Proceedings.** Petitioner did not use either form. Consequently, Petitioner’s motion will be dismissed for failure to comply

with the requirements of this Rule, but such dismissal will be without prejudice to the Petitioner to refile his motion on the proper forms.

The Court advises the Petitioner that if he decides to refile the motion after receipt of the proper forms, he must be cognizant of the one year limitations period for such motions imposed by the Antiterrorism and Effective Death Penalty Act. A review of the criminal proceedings shows that the Judgment was filed October 4, 2007, and Petitioner did not file a direct appeal. Therefore, Petitioner's one year limitations period for filing a motion to vacate would begin to run ten days from October 4, 2007, or on or about October 18, 2007, making any motion to vacate filed within one year of October 18, 2007, a timely filed motion. It appears, therefore, that Petitioner's one-year limitation expired mid-October 2008.

**IT IS, THEREFORE, ORDERED** that Petitioner's Motion to Vacate, Set Aside, or Correct Sentence is **DISMISSED WITHOUT PREJUDICE**.

The Clerk is directed to send Petitioner the appropriate forms in which to refile his § 2255 motion, should he decided to do so, along with a copy of this Order.

Signed: July 17, 2009

A handwritten signature in dark ink, appearing to read "L. H. Thornburg", written over a horizontal line.

Lacy H. Thornburg  
United States District Judge

